Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90

COMMENTS OF WINDSTREAM CORPORATION

Windstream Corporation, on behalf of its incumbent local exchange carrier ("ILEC") affiliates (hereinafter "Windstream"), submits the following comments in response to the Wireline Competition Bureau ("Bureau") Public Notice requesting input on the published list of census blocks for which price cap carriers would be eligible to receive Connect America Fund ("CAF") Phase I incremental support. As the Bureau acknowledges, its published list is intended to include those census blocks that are shown on the most recent version of the National Broadband Map as completely or partially unserved by fixed terrestrial broadband with advertised speeds of 3 Mbps downstream and 768 kbps upstream ("3/768"). However, such a list—even assuming it were complete and accurate on its own terms—is grossly underinclusive of the areas that should be eligible for CAF Phase I support.

First, this list excludes the many census blocks that are served in whole or in part only by the price cap ILEC with 3/768 broadband but which do not and cannot, without expensive network upgrades, have access to broadband that meets the 4 Mbps downstream and 1 Mbps

1

Public Notice, "Wireline Competition Bureau Seeks Comment on Areas Shown As Unserved on the National Broadband Map For Connect America Phase I Incremental Support," WC Docket No. 10-90, DA 12-1961 (rel. Dec. 5, 2012) (*Public Notice*). *See also* Public Notice, "Wireline Competition Bureau Updates the List of Potentially unserved Census Blocks in Price Cap Areas and Extends the Deadline for Comment on the List," WC Docket No. 10-90, DA 12-2001 (rel. Dec. 10, 2012).

² *Id.* at 1.

upstream ("4/1") deployment standard the Federal Communications Commission ("Commission") has set for CAF recipients.³ The Commission has proposed rightfully that the definition of "unserved areas" to be eligible for CAF Phase I support should include any census block lacking access to 4/1 broadband.⁴ However, at the same time, the Commission incongruously has proposed to use evidence of access to 3/768 broadband as a proxy for access to 4/1 broadband.⁵ Quite simply, 3/768 is a poor indication of the existence of 4/1 service, and excluding from CAF Phase I eligibility a large share of the census blocks that actually lack access to 4/1 broadband would undermine the goals CAF Phase I is designed to address.⁶

Second, the Bureau's list excludes census blocks in which the National Broadband Map indicates the presence of an unsubsidized competitor but for which Windstream's data indicate no such competitor actually provides 3/768 broadband. Windstream has gathered aggregated records of customer churn and number porting and has determined that there are a sizeable number of areas that are shown by the National Broadband Map as being served in whole or in part by an unsubsidized competitor but for which Windstream has received *zero requests in the past two years* from customers for any number ports that include cancellation of the customer's Windstream broadband service. Windstream submits that the complete absence of such a porting

See (

³ See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, at ¶ 21 (2011) (*USF/ICC Transformation Order*), pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

⁴ Connect America Fund, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, at ¶ 9 (rel. Nov. 19, 2012) (FNPRM).

⁵ *Id.* at ¶ 12 fn.17.

See, e.g., USF/ICC Transformation Order at ¶ 21 (noting that CAF Phase I is intended "to spur immediate" deployment of "robust, scalable broadband" meeting the 4/1 standard), ¶ 145 (enunciating goal "to promote the most rapid expansion of broadband to as many households as possible" and "where there is no private sector business case for deployment of broadband").

request over a reasonable historical period in a given area establishes, at the least, a presumption that there is no competitor providing 3/768 service in the area, and thus any locations within that area should be eligible for CAF Phase I support if the incumbent is not offering access to 4/1 broadband.

For these reasons, Windstream urges the Commission, at a minimum, to add to the list of eligible census blocks any additional census blocks for which the price cap ILEC certifies that it does not, and cannot with the existing network infrastructure, provide 4/1 broadband service, and for which either (1) the National Broadband Map shows there is no unsubsidized competitor providing fixed terrestrial broadband at 3/768, or (2) the National Broadband Map shows an unsubsidized competitor but the price cap ILEC certifies that it has received no requests for number ports that include cancellation of the customer's broadband service in the relevant area within a reasonable historical period.

I. THE LIST OF ELIGIBLE CENSUS BLOCKS WRONGLY EXCLUDES MANY AREAS THAT ARE SERVED BY THE ILEC WITH 3/768 BROADBAND SERVICE BUT LACK ACCESS TO ANY 4/1 SERVICE.

Even assuming, for the sake of argument, that the census block list published by the Bureau correctly reflects what it purports to reflect—those census blocks shown on the most recent version of the National Broadband Map as completely or partially unserved by fixed terrestrial broadband with advertised speeds of $3/768^8$ —the list is woefully underinclusive because it does not contain those census blocks that are served in whole or in part only by the

Windstream continues to support the position of CenturyLink and others that the coverage of wireless Internet service providers (WISPs) should be independently verified as meeting the Commission's standards before such coverage is used to exclude an area from eligibility for CAF Phase I funding. *See, e.g.*, Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 3-4 (July 12, 2012); CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (June 26, 2012).

⁸ Public Notice at 1.

price cap ILEC with 3/768 broadband but that do not and cannot, without expensive network upgrades, have access to broadband service meeting the 4/1 standard the Commission has set for CAF recipients.⁹

The Commission has proposed rightfully that the definition of "unserved areas" to be eligible for CAF Phase I support should include any census block lacking access to 4/1 broadband. Such a proposal would align the program's operation with the Commission's goal of expanding access to broadband that satisfies its 4/1 speed threshold, and thus would correct a major flaw of Round 1 of CAF Phase I. However, using National Broadband Map evidence of access to 3/768 broadband to classify areas as ineligible for CAF Phase I support—in other words, using 3/768 "as a proxy for" 4/1¹³—undermines the Commission's goals and perpetuates the mismatch inherent in Round 1 by rendering large swaths of America ineligible despite the fact that they lack access to broadband meeting the Commission's universalization target. 14

See USF/ICC Transformation Order at \P 21 (stating that carriers electing to receive CAF Phase I incremental support must provide broadband with 4/1 actual speeds).

FNPRM at ¶ 9. Windstream previously had advocated—largely for the cost reasons noted in this filing—that the Commission's CAF buildout requirement should be 4 Mbps downstream and 768 Mbps upstream rather than 4/1. See, e.g., Comments of Windstream Communications, Inc., Docket No. 10-90 et al., at 16-18 (April 18, 2011). However, given the Commission has retained the 4/1 standard, it should permit CAF funding to be used toward deployment in any area that lacks 4/1 service.

See, e.g., id. at \P 21 (noting that CAF Phase I is intended "to spur immediate" deployment of "robust, scalable broadband" meeting the 4/1 standard), \P 145 (enunciating goal "to promote the most rapid expansion of broadband to as many households as possible" and "where there is no private sector business case for deployment of broadband").

In the first round of CAF Phase I, locations were only eligible for support if, according to the then-current version of the National Broadband Map, they were in areas that lacked access to fixed terrestrial broadband with a minimum speed of 768 Kbps downstream and 200 kbps upstream. *USF/ICC Transformation Order* at ¶ 146.

¹³ *FNPRM* at ¶ 12 fn.17.

See, e.g., USF/ICC Transformation Order at ¶ 21 (noting that CAF Phase I is intended "to spur immediate" deployment of "robust, scalable broadband" meeting the 4/1 standard),

The fact that a census block is listed on the National Broadband Map as having access to broadband service at speeds of at least 3/768 in no way indicates that it has access to 4/1 broadband service. In particular, as Windstream and other price cap ILECs have noted on several previous occasions, the increase from 768 Kbps to 1 Mbps upload speed requires significant infrastructure upgrades. ¹⁵ One Mbps upload speeds are not necessarily available to all customers served by standard ADSL 2+architecture over a 24 AWG copper pair of 12,000 feet. Rather, delivery of reliable upload speeds of 1 Mbps would require an upgrade, such as two-pair bonded ADSL 2+. Two-pair bonded ADSL2+ essentially doubles last mile deployment cost since the end user modem is two to three times the cost of a normal single pair modem, two cable pairs are used instead of one, and two ADSL2+ ports are required at the DSLAM. Moreover, to achieve 1 Mbps of customer payload throughput would require an upload connection speed of more than 1.2 Mbps, while an upload connection speed of 1 Mbps would produce an actual throughput of about 820 Kbps. 16 Even where the loop length from the DSLAM to the customer is less than 12,000 feet, a service provider can only deliver service meeting the 4/1 requirement—or more precisely, service at speeds of 6 Mbps download/1.5

^{¶ 145 (}enunciating goal "to promote the most rapid expansion of broadband to as many households as possible" and "where there is no private sector business case for deployment of broadband").

See, e.g., Comments of Windstream Communications, Inc., Docket No. 10-90 et al., at 18 (April 18, 2011); Comments of AT&T, WC Docket No. 10-90 et al., at 94 (April 18, 2011) (noting that its analysis using a modified version of the Commission's existing cost proxy model to reflect broadband characteristics revealed that ILECs would require 50 percent more support to provide 1 Mbps upload speed rather than 768 Kbps upload speed).

See Comments of Windstream Communications, Inc., WC Docket Nos. 10-90, 05-337,
GN Docket No. 09-51, Appendix at 6 (July 12, 2010) (Windstream CAF NOI Comments).

Mbps upload, the next-fastest standard service tier—if the DSLAM is ADSL2+ capable and fiber-fed.¹⁷

Thus, to the extent the Commission intends that CAF Phase I support should fund broadband deployment in areas that lack 4/1 service, it makes sense for the Commission to take a more surgical approach toward eligibility by adding to the list of eligible census blocks those census blocks that lack competition and for which the price cap ILEC certifies that it does not, and cannot with the existing network infrastructure, provide 4/1 service. ILEC self-certification is already a fundamental part of the existing CAF Phase I framework; the proposed rules for Round 2 contemplate self-certification of various requirements, including that the carrier's current capital improvement plan does not already include plans to complete broadband deployment within the next three years to the locations on which incremental support is being spent. Therefore, ILEC certification as to the availability of 4/1 service would neither overcomplicate nor delegitimize the CAF Phase I program.

Alternatively, to the extent the Commission wishes to use National Broadband Map data to determine CAF Phase I eligibility, it would be more reasonable to view evidence of service at 6/1.5 on the National Broadband Map as a proxy for the availability of 4/1 service. As discussed above, the mechanics of network building dictate that locations in which only 3/768 service is available almost certainly are not capable of receiving 4/1 service without significant network upgrades, including shortening copper loops and extending fiber to DSLAMs. Where the

Therefore, the technology needed to provide 1 Mbps or greater upload speed typically enables download speeds in excess of 4 Mbps; indeed, 4/1 as a speed target lacks any rational basis in the mechanics of network building or the actual speed tiers offered by Internet service providers.

See FNPRM at Appendix A, Proposed 47 C.F.R. § 54.312(c)(3). See also 47 C.F.R. § 54.312(b)(3) (requiring similar self-certifications in Round 1 of CAF Phase I).

network infrastructure is such that customers have access to 4/1 service, providers are generally offering 6/1.5 service, the next standard service tier as reflected on the National Broadband Map.

II. AN ILEC SHOULD BE PERMITTED TO ADD TO THE LIST OF ELIGIBLE AREAS THOSE AREAS WHERE THE ILEC HAS RECEIVED NO REQUESTS FOR PORTS WITH BROADBAND OVER A REASONABLE HISTORICAL PERIOD.

The Commission has accurately noted that commenters have suggested the National Broadband Map may contain inaccuracies that would materially impact the targeting of support, and thus has proposed a challenge process rather than relying exclusively on National Broadband Map data to determine CAF Phase I eligibility. ¹⁹ Indeed, in its analysis of the census block list published by the Bureau, Windstream has discovered that there are many census blocks that are excluded because the National Broadband Map demonstrates the presence of an unsubsidized competitor—often a cable company—but for which Windstream's data and experience indicate that no such competitor is providing broadband service at speeds of at least 3/768. ²⁰

Windstream has gathered aggregate records of customer churn and number porting—customers switching their phone and broadband service to a competitor—and has grouped that porting information by matching internal identification (MIROR_ID) of specific carrier serving areas (CSAs)²¹ and cross-referenced those records with a list of associated census blocks that do not have access to 4/1 service from Windstream and are shown on the National Broadband Map

¹⁹ *FNPRM* at ¶¶ 13-14, fn.18.

The data used to develop the National Broadband Map is largely self-reported by Internet service providers, and the Map has been described by the National Telecommunications and Information Administration as a "best-efforts snapshot" of broadband coverage. See NTIA, "About National Broadband Map," available at http://www.broadbandmap.gov/about (describing map). An ISP may be incented to over-report its capabilities and coverage areas to the extent such representations may provide marketing advantages or may help to exclude another provider from receiving Universal Service Fund support in given areas.

Carrier serving area is a term used by local exchange carriers to denote a geographic customer area that is served or planned to be served by a single digital loop carrier.

as served by an unsubsidized competitor at speeds of at least 3/768.²² Though these census blocks are excluded from the Bureau's list of eligible census blocks at least in part because of the alleged presence of an unsubsidized competitor,²³ in many areas encompassing numerous census blocks, Windstream has received *no* requests in the past two years from customers for telephone number ports that are accompanied by cancellation of the customer's Windstream broadband service.²⁴ In other words, despite the alleged presence of a competitor providing service at speeds of at least 3/768 in areas where Windstream itself does not provide service exceeding 3/768, Windstream has not received a single request in two years in an entire area to port a phone number to a competitor and cancel the associated Windstream broadband service.

Windstream submits that the lack of such porting requests throughout an entire area over a reasonable historical period is strong evidence that there is no competitor providing 3/768 or better service in that area. Thus, if an ILEC is able to certify that there have been no such porting requests in a given area over a reasonable historical period, such certification should create a presumption that the area is eligible for CAF Phase I support. The burden then would shift to the competitive provider to submit affirmative evidence that it is providing 3/768 or better service in the relevant area. Such evidence should include printouts of billing information

CSA data can be geocoded to U.S. Census Bureau units, including census blocks, such that porting data can be analyzed at the census block level.

Some of these census blocks are also excluded from the Bureau's list because they are shown to have access to 3/768 service from the ILEC. As discussed in the previous section of these comments, these census blocks should not be excluded from CAF Phase I eligibility to the extent the ILEC can certify that they do not have access to 4/1 service.

For the purposes of this analysis Windstream is focusing on cases where customers are porting their phone numbers and cancelling their broadband service, which indicates such customers are switching to a broadband competitor. Number port requests without accompanying broadband service cancellations can be characteristic of customers terminating or changing only their phone service, and as such are not indicative of the presence of a fixed broadband competitor.

for customers within the area or engineering analyses, with accompanying officer certification as to the veracity of the material provided.²⁵

CONCLUSION

The Commission, at a minimum, should add to the list of eligible census blocks any additional census blocks for which the price cap ILEC certifies that it does not, and cannot with the existing network infrastructure, provide 4/1 broadband service, and for which either (1) the National Broadband Map shows there is no unsubsidized competitor providing fixed terrestrial broadband at 3/768, or (2) the National Broadband Map shows an unsubsidized competitor but the price cap ILEC certifies that it has received no requests for number ports that include cancellation of the customer's broadband service in the relevant area within a reasonable historical period.

Respectfully submitted,

/s/ Malena F. Barzilai

Malena F. Barzilai Eric N. Einhorn Windstream Corporation 1101 17th St., N.W., Suite 802 Washington, DC 20036 (202) 223-7664 (phone) (202) 223-7669 (fax)

Its Attorneys

January 9, 2012

(proposing types of probative evidence to be used in challenging the eligibility of a particular area for CAF Phase II funding).

9

See Public Notice, Wireline Competition Bureau Seeks Comment on Procedures Relating to Areas Eligible for Funding and Election to Make a Statewide Commitment in Phase II of the Connect America Fund, WC Docket No. 10-90, DA 12-2075, at ¶ 12 (rel. Dec. 27, 2012)